

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In Re:

**Steven K. Mather And Christy D. Mather**

Case No. 10-81691

Chapter 13

Social Security No. xxx-xx-1765 and xxx-xx-2752  
Address: 2701 Skybrook Lane, Durham, NC 27703-

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Debtors

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**OBJECTION TO CLAIM**

**NOW COME** the Debtors above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully object to the proof of claim filed by the creditor CHASE HOME FINANCE, L.L.C. and dated November 17, 2010, for the following reasons:

1. The Debtors believe the “pre-petition” arrearage claim in the amount of \$30,760.30 is overstated.
2. The proof of Claim asserts that Chase Home Finance LLC is entitled to fees totaling \$ 1,327.84 for the following described expenses:
  - a. Foreclosure Fees & Expenses : \$ 999.84
  - b. Inspection Fees: \$ 28.00
  - c. Bankruptcy post petition, pre-confirmation legal fees & expenses: \$ 300.00
3. Pursuant to N. C. Gen. Stat. § 45-91, for a fee to be allowed, Chase Home Finance LLC must assess the fee within 45 days from the date which the fee was incurred, and must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower’s last known address within 30 days after assessing the fee.
4. Chase Home Finance LLC, proof of claim does not specify when the fees were incurred, and does not specify when the fees were assessed.
5. Chase Home Finance LL, proof of claim does not include a copy of the explanatory statement mailed to the borrower at the borrower’s last known address.
6. Chase Home Finance LLC, failure to provide notice of the fees charged constitutes a waiver of said fees pursuant to N.C.Gen Stat. § 45-91(3). See *In re Saeed*, No.10-10303 (Bankr. M.D,N,C., Sept. 17,2010) (2010 WL 3745641. See also *In re Obie*, No. 09-80794, (Bankr. .M.D.N.C., Nov. 24, 2009) (2009 WL 4113587).
7. Additionally, the debtors object to the ongoing monthly mortgage payment stated in the proof of claim. The debtors’ July 2010 mortgage statement, attached as Exhibit A, shows a monthly payment of \$1,224.62, which includes principal, interest , and escrow. The proof of claim is also

inconsistent with the monthly principal and interest payment shown on the promissory note attached to the proof of claim, which shows a monthly principal and interest payment of \$ 964.63

Because the Debtors contest the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil procedure and Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtors are, by separate document attached herewith, requesting production from said creditor of a payment history and related information.

**WHEREFORE**, the Debtors pray that the Court enter an Order disallowing the above referenced fees, and reducing the pre-petition arrearage claim accordingly. Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtors request that, until such time as the aforementioned payment history is provided, the Court treat any hearing upon this objection as preliminary, in accordance with the power vested in the Court pursuant to 11 U.S.C. 105(a).

Lastly, pursuant to N.C.G.S. § 6-18 & 19, the Debtors pray that the costs of this action be taxed to the Creditor and that the attorney for the Debtors be awarded fees in the amount of \$ 500.00

Dated: March 16, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Koury Hicks

Koury Hicks

N.C. State Bar No. 36204

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**CERTIFICATE OF SERVICE**

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on March 16, 2011. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

CHASE HOME FINANCE, L.L.C.

**Attn: Managing Agent**

3415 Vision Drive

Columbus, OH 43219-

Sean Corcoran

Attorney for CHASE HOME FINANCE, L.L.C.

Brock & Scott, P.L.L.C

5121 Parkway Plaza Drive, Ste 300

Charlotte, NC 28217-

U.S. Bankruptcy Administrator

Richard M. Hutson, II

Chapter 13 Trustee

/s Renee Nolte

Renee Nolte